Supreme Court of the United States

OCTOBER TERM, 1965

No. 1126

JAMES J. SAXON,
COMPTROLLER OF THE CURRENCY, PETITIONER

vs.

COMMERCIAL SECURITY BANK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,357

JAMES J. SAXON, Comptroller of the Currency, APPELLANT

v.

COMMERCIAL SECURITY BANK, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

RELEVANT DOCKET ENTRIES

1963

July 18— Complaint, appearance.

July 18— Motion of Pltff. for Temporary Restraining Order, Affidavits (2); Exhibits A & B.

July 18— Motion of Pltff. for Preliminary Injunction.

July 19— Temporary restraining order; $100.00 undertaking; issued at 10:00 a.m. Curran, J.

July 19— Order fixing July 29, 1963 at 10:00 a.m. for hearing on motion for preliminary injunction Curran, J.

July 26— Motion of pltff. for postponement of date of hearing motion for preliminary injunction; exhibit A.

July 26— Order continuing hearing on motion for preliminary injunction indefinitely. Sirica, J.

1964

June 26— Motion of defendant to dismiss; c/m 6-26-64; memorandum.

1964

July 6— Cross motion of plaintiff for summary judgment; statement of material facts; points and authorities in support of cross motion and in opposition to defendants' motions.

[fol. 2]

Dec. 18— Memorandum and order denying motion of defendant to dismiss; denying motion of Intervenor-Defendant for summary judgment, and granting motion of plaintiff for summary judgment; defendant is enjoined from authorizing the establishment of the branch bank by the Intervenor-Defendant. Walsh, J.

1965

Feb. 15— Notice of appeal by defendant #1 from order 12/18/64; copy to J. Bell and Whiteford, Hart, Carmody and Wilson.

Mar. 17— Order extending time for deft. #1 to file and docket record on appeal fifty (50) days to and including May 13, 1965. Walsh, J.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1815-63

COMMERCIAL SECURITY BANK, Ogden, Utah, PLAINTIFF

v.

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE ORDERS—Filed July 18, 1963

1. Plaintiff is a banking corporation organized under the laws of the State of Utah. Defendant is a duly constituted officer of the Executive Branch of the Govern-

ment of the United States maintaining his offiicial place of business in the District of Columbia and is an "agency" of the said Government within the meaning of Title 5 United States Code, Section 1001.

This action arises under Section 36 of Title 12 of the United States Code, commonly referred to as the National Bank Act. As hereinafter set forth, plaintiff is engaged in the banking business in the State of Utah, where it has a large investment in capital, property, equipment and goodwill, irreparable damage to which is threatened by certain action of the defendant described hereinafter. [fol. 3] The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

This is a proceeding (1) for a declaratory judgment that the issuance by the defendant Comptroller of the Currency of his Certificate evidencing his approval and authorization of the establishment and operation by First Security Bank of Utah, N. A., of Ogden, Utah, of a branch on Harrison Blvd. between 30th and 36th Streets, Ogden, Utah, would constitute a violation of Title 12 United States Code, Section 36, and (2) to enjoin the defendant Comptroller of the Currency from issuing to the First Security Bank of Utah, N. A. his Certificate of Authority for the establishment and operation of a branch bank on Harrison Blvd. between 30th and 36th Streets, Ogden, Utah.

2. Plaintiff is a state bank chartered on July 30, 1925, under the banking laws of the State of Utah and is engaged in that State in the business of banking. It maintains its principal place of business at Ogden, Utah, and, in addition, is operating a branch bank within the corporate limits of the City of Ogden, Utah, under the authority of the laws of the State of Utah and subject to the control and supervision of the Bank Commissioner of the State of Utah.

3. Upon information and belief, on or about June 25, 1963, the First Security Bank of Utah, N.A. filed an application with the defendant Comptroller of the Currency, Washington, D. C., pursuant to Title 12 United States Code, Section 36(c) requesting permission, approval and authorization from said defendant to establish

and operate a branch bank on Harrison Blvd., between 30th and 36th Streets, in Ogden, Utah.

4. The First Security Bank of Utah, N. A., is a national banking association chartered by the Comptroller of the Currency under the National Bank Act to do a banking business in the City of Ogden, Utah, where it maintains its principal office.

5. The approval and authorization by the defendant Comptroller of the Currency of the establishment and operation of a branch bank at the designated location by the First Security Bank of Utah, N. A. is prohibited by Title 12 United States Code, Section 36(c). Title 12 United States Code, Section 36 provides in part as follows:

> "The conditions upon which a national banking association may . . . establish and operate a branch or branches are the following:
>
> * * * *
>
> [fol. 4] "(c) A national banking association may, *with the approval of the Comptroller of the Currency*, establishing and operate new branches: (1) Within the limits of the city, town, or village in which the said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; . . ." (Emphasis supplied)

Under the foregoing provisions of Federal law a national banking association is accorded the right to establish and operate a branch with the approval of the Comptroller of the Currency only at such locations as the statute law of the State specifically authorizes State banks to establish and operate branches.

6. The statute law of the State of Utah, Utah Code Ann. Title 7, Chap. 3, Sect. 6 (1953, as amended), prohibits branches in any city or town in which is located any bank regularly transacting a customary banking business, with certain exceptions not here applicable relating to cities of the "first class":

> "Except in cities of the first class, or within unincorporated areas of a county in which a city of the

first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establishing such branch shall take over an existing bank. . . ."

A city of the "first class" is defined under the statute law of Utah as one with a population in excess of 90,000 persons, while a city of the "second class" is defined as one with more than 30,000 and less than 90,000 persons. Utah Code Ann. Title 10, Chap. 1, Sect. 1, (1953 as amended). The City of Ogden is a city of the "second class".

7. The desigated location of the proposed branch of the First Security Bank of Utah, N. A. is on Harrison Blvd., between 30th and 36th Streets, in the City of Ogden, Utah. There are three other banks regularly transacting a banking business in the City of Ogden, Utah. Plaintiff, as stated above, has both its main office and one branch in the City of Ogden. Two other banks also have their main offices located in the City of Ogden: the Bank of Utah, and the Bank of Ben Lomand.

8. Plaintiff alleges on the basis of the above-quoted provisions of the National Bank Act and of the statute law of Utah, that the establishment and operation of a branch [fol. 5] of the First Security Bank of Utah, N. A. in the City of Ogden is prohibited because there are three other banks regularly transacting a customary banking business in said City. Accordingly, the issuance by the defendant of his Certificate approving and authorizing such proposed branch at the designated location would be illegal and in violation of Title 12 United States Code, Section 36.

9. Plaintiff alleges upon information and belief that, despite the patent prohibition of law described above, the field investigation of the application of the First Security Bank of Utah, N. A. for a branch by a National Bank Examiner has been completed, and that said application will be before the Comptroller for decision early in the week of July 22, 1963. Plaintiff verily believes that defendant, unless restrained, may, without any notice of in-

tention to plaintiff, issue to the First Security Bank of Utah, N. A. his Certificate approving and authorizing the establishment and operation of a branch of said Bank at the location described in its pending application, all in contravention of Title 12 United States Code, Section 36.

10. Plaintiff further alleges that the issuance by defendant of his Certificate to the First Security Bank of Utah, N. A. will confer upon said Bank conclusive legal authority to establish and operate a branch in the vicinity of the location described therein; that under the precedent of prior judicial decisions the plaintiff may not challenge the validity of the said Certificate in a proceeding against the said Bank; and that plaintiff therefore has no adequate remedy at law.

11. Plaintiff further alleges that the unlawful issuance by defendant of his Certificate as aforesaid will cause great and irreparable damage to the banking business of said plaintiff. The location at which it is proposed to establish a branch is approximately 2 miles from the location of plaintiff's main office and branch within the City of Ogden, and a substantial number of plaintiff's customers, depositors, and borrowers are located in the vicinity of the proposed branch. Accordingly, if the First Security Bank of Utah, N. A., a bank which is many times larger than is plaintiff, were allowed to establish a branch at that location, a substantial part of the banking business and service now performed by plaintiff would be diverted, all to the financial detriment and irreparable injury of the plaintiff, and contrary to the provisions of Title 12 United States Code, Section 36.

WHEREFORE, plaintiff prays:

1. That the court enter a judgment declaring and adjudging that the defendant is prohibited by Title 12 United States Code, Section 36, from issuing a Certificate of Authority authorizing the First Security Bank of Utah, N. A. to establish and operate a branch on Har-
[fol. 6] rison Blvd., between 30th and 36th Streets in Ogden, Utah.

2. That the court enter its order enjoining the defendant from issuing a Certificate of Authority authorizing

the First Security Bank of Utah, N. A. to establish and operate a branch on Harrison Blvd., between 30th and 36th Streets in Ogden, Utah.

3. That the court, pending the final determination of this cause issue a preliminary injunction, restraining and enjoining defendant in the aforesaid manner and form.

4. That, pending the issuance of the aforesaid preliminary injunction, the court issue forthwith a temporary restraining order restraining and enjoining defendant in the aforesaid manner and form.

5. That the court grant plaintiff such other and further relief as my be just and proper.

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff
1001 Connecticut Avenue
Washington 6, D. C.
Telephone: EX 3-5333

NEIL R. OLMSTEAD
Ogden, Utah
Of Counsel

IN UNITED STATES DISTRICT COURT

* * * *

MOTION FOR TEMPORARY RESTRAINING ORDER—
Filed July 18, 1963

Now comes the plaintiff by its undersigned attorney and moves this Court as follows:

To grant forthwith and without notice a temporary restraining order restraining and enjoining the defendant or his agents from issuing to the First Security Bank of Utah, N.A. a Certificate or any other writing approving and authorizing the establishment and operation by the said First Security Bank of Utah, N.A. of a branch bank at a location on Harrison Blvd., between 30th and 36th Streets, Ogden, Utah, pending a hearing on, and disposition of plaintiff's Motion for Preliminary Injunction filed [fol. 7] herein on July 18, 1963; and for cause refers to the Affidavits attached hereto, and made a part hereof, and to the Statement of Points and Authorities in support of this Motion, and further refers to the Complaint Requesting Declaratory Judgment and Injunctive Orders and to the Motion for Preliminary Injunction, both filed herein on July 18, 1963.

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff
1001 Connecticut Avenue
Washington 6, D. C.
Telephone: EX 3-5333

NEIL R. OLMSTEAD
Ogden, Utah

Of Counsel

* * * *

AFFIDAVIT OF ROBERT G. HEMINGWAY IN SUPPORT OF MOTION—Filed July 18, 1963

STATE OF UTAH)
) ss
COUNTY OF WEBER)

ROBERT G. HEMINGWAY, being first duly sworn, on oath deposes and says:

He is President of Commercial Security Bank, plaintiff in the above entitled action, and as such he makes and submits this affidavit for and on behalf of said Bank in support of it's (sic) motion for a temporary restraining order and preliminary injunction therein.

Commercial Security Bank is a banking corporation organized and existing under the laws of Utah. It's (sic) principal office and place of business is at 2491 Washington Boulevard, within the corporate limits of Ogden, Utah, and it has a branch office within the corporate limits of said Ogden, Utah, located at 458 25th Street. By the laws of Utah it is restricted from establishing any additional branch in the said City of Ogden.

Plaintiff, Commercial Security Bank, has customers and depositors who reside or have their places of business in the vicinity of the location of the proposed branch of [fol. 8] the First Security Bank of Utah, N. A., and affiant verily believes,

1. As of July 1, 1963, the number of depositors of plaintiff Bank who reside within a one mile radius of the location of the proposed branch of First Security Bank of Utah, N. A. exceeds fifteen percent of plaintiff's total depositors.
2. The deposits of plaintiff's depositors who reside within such one mile radius exceeds fifteen percent of all of plaintiff's demand deposits.
3. The total of loans made by plaintiff to borrowers residing within such one mile radius exceeds fifteen percent of all loans made by plaintiff.

A field examination of the application for the proposed branch was ordered by the Comptroller and such ex-

amination was completed today, July 16, 1963. Affiant is informed and believes that a report of such field examination will be immediately forwarded by the Examiner to his Regional Office in Denver, Colorado, and from there to the Comptroller of the Currency in Washington, D. C., and such report will be received by the Comptroller within a period of five to seven days from this date. Affiant is further informed that it is the policy of the Comptroller to act upon applications for branch banks immediately upon receipt of the Examiner's report, and affiant believes that the Comptroller will act upon the application of First Security Bank of Utah, N. A. for its proposed branch referred to above immediately upon receipt of the Examiner's report thereon.

Should the Comptroller of the Currency authorize the First Security Bank of Utah, N. A., which is the largest bank in the City of Ogden with combined resources in excess of Three Hundred Sixty Million ($360,000,000.00) Dollars, to open a branch bank in the area it proposes, plaintiff will necessarily suffer severe loss of loans, deposits and other business and will sustain damage to it's (sic) business and profits of upwards of Fifty Thousand ($50,000.00) Dollars a year. Additionally, if the Comptroller of the Currency is permitted to issue his Certificate of Authority to First Security Bank of Utah, N. A. to open and operate the said branch, plaintiff would have no adequate remedy at law.

Dated July 16, 1963.

/s/ ROBERT G. HEMINGWAY

[fol. 9] Subscribed and sworn to before me this 16th day of July, 1963.

/s/ NEIL R. OLMSTEAD
Notary Public
Residing at Ogden, Utah

My commission expires:
March 24, 1967.

* * * *

AFFIDAVIT OF JAMES F. BELL IN SUPPORT OF TEMPORARY RESTRAINING ORDER—Filed July 18, 1963

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

James F. Bell, being duly sworn, deposes and states:

1. That I am an attorney duly admitted to practice before the District Court of the United States for the District of Columbia.

2. On this day, July 18, 1963, at the request and by the direction of the plaintiff, Commercial Security Bank of Ogden, Utah, I have filed herein a Complaint for Declaratory Judgment and Injunctive Orders restraining defendant from issuing his Certificate approving and authorizing the establishment and operation by the First Security Bank of Utah, N. A. (a national banking association) of a branch bank on Harrison Blvd., between 30th and 36th Streets, Ogden, Utah, and at the same time I filed a Motion for Preliminary Injunction to restrain defendant from issuing said Certificate during the pendency of that Complaint.

3. The basis of the aforesaid Complaint and Motion is that defendant is prohibited by Title 12 United States Code, Section 36, from approving and authorizing a branch office of the aforesaid First Security Bank of Utah, N. A. at the location above-described.

4. As stated in the Affidavit of Mr. Robert G. Hemingway, President of Commercial Security Bank, the field investigation on the application of the First Security Bank of Utah, N. A. for a branch at the above location has been completed and the application, with the report [fol. 10] thereon, will be at the Comptroller's office awaiting decision early next week.

5. It has been the announced policy of the defendant to give expeditious action to all applications of National banks for branches. I verily believe, therefore, that the defendant may issue a certificate of authority to the First Security Bank of Utah, N. A. before this Court has an

opportunity to hear, or to act upon, plaintiff's pending Motion for a Preliminary Injunction.

6. The Complaint and the Motion for Preliminary Injunction herein allege, and I verily believe, that after the defendant issues his Certificate to the First Security Bank of Utah, plaintiff will have no legal remedy to prevent the operation of such branch office by said Bank at the allegedly illegal location on Harrison Blvd. between 30th and 36th Streets, Ogden, Utah.

7. If defendant is not restrained immediately from issuing his Certificate of approval and authority to the First Security Bank of Utah, N. A. of a branch on Harrison Blvd. between 30th and 36th Streets, Ogden, Utah, the said Bank will, as soon as it receives defendant's certificate, open for business and commence operation of a branch office at the allegedly illegal location above-described, to the irreparable loss, injury and damage to the banking business of the plaintiff, and that the issuance by defendant of his Certificate will deprive the plaintiff of any legal remedy against such illegal action of the defendant.

/s/ JAMES F. BELL
JAMES F. BELL

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

Subscribed and sworn to before me this 18th day of July, 1963.

/s/ MARY MARTICELLI
Notary Public

My Commission Expires Oct. 31, 1966

(SEAL)

[fol. 11]

IN UNITED STATES DISTRICT COURT

* * * *

MOTION FOR PRELIMINARY INJUNCTION—
Filed July 18, 1963

Comes now the plaintiff herein and respectfully moves this Court to grant a preliminary injunction restraining the defendant from issuing his Certificate approving and authorizing the establishment and operation by the First Security Bank of Utah, N. A., of a branch on Harrison Blvd., between 30th and 36th Streets, Ogden, Utah.

In support of such motion plaintiff states to the Court as follows:

1. Plaintiff is filing, simultaneously with this motion, a Complaint for Declaratory Judgment and Injunctive Orders against defendant requesting—

(a) A determination that the establishment and operation by the First Security Bank of Utah, N. A., (a national banking association) of a branch bank at the location above described would be a violation of Title 12 United States Code, Section 36 (National Banking Act);

(b) Orders restraining defendant from issuing his Certificate approving and authorizing the establishment and operation of such branch bank; and

(c) Such other and further relief as the facts and circumstances may require.

2. Plaintiff Commercial Security Bank, does now operate, and since July 30, 1925 has operated, a bank in Ogden, Utah, which bank was duly established under the laws of the State of Utah. In addition to its principal office it also operates a branch office in that city.

3. Title 12 United States Code, Section 36(c), authorizes the establishment and operation of branches by National Banks, with the approval of the Comptroller of the Currency, at locations where State banks are expressly permitted by State law to establish and operate branches. The law of the State of Utah prohibits the establishment and operation of branches of State banks in

a city or town in which is located any bank regularly transacting a banking business, with certain exceptions not here applicable relating to cities of the "first class." Utah Code Ann. Tit. 7, Chap. 3, Sect. 6. As the proposed location for the proposed branch of the First Securi- [fol. 12] ty Bank of Utah, N. A. is within the City of Ogden where there are presently three banks regularly transacting a banking business (Plaintiff, the Bank of Utah, and the Bank of Ben Lomand), the approval of the establishment of such branch by the defendant herein would be illegal.

4. Plaintiff further alleges, upon information and belief, that despite the prohibition of law described in paragraph 3 above, a field investigation by a National Bank Examiner of the application of the First Security Bank of Utah, N. A. for a branch has been completed, and that the said application will be before the Comptroller for decision early in the week of July 22, 1963. Plaintiff verily believes that defendant, unless restrained, may, without any notice to plaintiff, issue to the First Security Bank of Utah, N. A. his Certificate approving and authorizing the establishment and operation of a branch of said Bank to the location described in its pending application, all in contravention of Title 12 United States Code, Section 36.

5. The issuance of the aforesaid Certificate by the defendant to the First Security Bank of Utah, N. A. would constitute conclusive legal authority of said bank to establish and operate its proposed branch at the location hereinbefore described, and such action could not be challenged by plaintiff in any subsequent proceeding. Therefore, the plaintiff has no adequate remedy at law.

6. Plaintiff further alleges that the issuance by defendant of his Certificate as aforesaid will cause great and irreparable damage to the banking business of said plaintiff. The First Security Bank of Utah, N. A. is a much larger bank than is plaintiff. The location at which it proposes to establish a branch is approximately 2 miles from the location of plaintiff's main office and branch within the City of Ogden. A substantial number of the customers, depositors, and borrowers of the plaintiff are located in the vicinity of the proposed branch. If the

First Security Bank of Utah, N. A., a bank many times larger than plaintiff, were allowed to establish a branch at that location, a substantial part of the banking business and service now performed by plaintiff would be diverted, all to the financial detriment and irreparable injury of the plaintiff, and contrary to the provisions of Title 12 United States Code, Section 36.

WHEREFORE, plaintiff prays the Court to hear this Motion promptly and to issue its preliminary injunction restraining defendant from issuing his Certificate above [fol. 13] described pending the hearing and determination of the complaint herein filed.

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff
1001 Connecticut Avenue
Washington 6, D. C.
Telephone: EX 3-5333

NEIL R. OLMSTEAD
Ogden, Utah

Of Counsel

IN UNITED STATES DISTRICT COURT

* * * *

TEMPORARY RESTRAINING ORDER—Filed July 19, 1963

On consideration of the Motion for Temporary Restraining Order filed herein on this 18th day of July, 1963, and the Complaint filed herein on July 18, 1963, and the Motion for Preliminary Injunction filed on the same date, it appears to the Court:

That the defendant may issue to the First Security Bank of Utah, N. A. (a national banking association) a certificate approving and authorizing the establishment of a branch bank on Harrison Blvd. between 30th and

36th Streets, Ogden, Utah, before the return date for answering plaintiff's Motion for Preliminary Injunction and before hearing on plaintiff's Complant for a permanent restraining order against the defendant;

That the First Security Bank of Utah, N. A., upon issuance by defendant of his Certificate, will be authorized forthwith to establish and operate a branch bank at the location above-described during the pendency of plaintiff's Motion for Preliminary Injunction;

That plaintiff is now and for some years past has been operating banking offices in the City of Ogden, Utah, under the laws of the State of Utah, within which city defendant may approve and authorize a branch of the First Security Bank of Utah, N. A.;

[fol. 14] That the Complaint herein alleges that the issuance by the defendant of his Certificate to the said National Bank approving and authorizing its operation of a branch bank at the location therein described would constitute a violation of Title 12 United States Code, Section 36;

That after the issuance by defendant of his Certificate to First Security Bank of Utah, N. A., a restraining order against defendant will be of no avail;

And it further appearing to this Court that, because of the foregoing, plaintiff will suffer irreparable injury, loss or damage unless a temporary restraining order shall be granted, as prayed, it is by the Court this 19th day of July, 1963, at 10:00 o'clock A. M.,

ORDERED, that said defendant and his agents be, and he and they are hereby, restrained and enjoined from issuing to the First Security Bank of Utah, N. A. his Certificate approving and authorizing the establishment and operation of a branch of said Bank on Harrison Blvd. between 30th and 36th Streets, Ogden, Utah.

2. That the said plaintiff shall give security in the sum of $100.00 conditioned for the payment of such costs and damages as may be incurred or suffered by said defendant if he be found that he shall be wrongfully restrained hereby, and that since the corporate office of plaintiff is not in the District of Columbia, the personal bond of plaintiff's attorney, James F. Bell, 1001 Connec-

ticut Ave., Washington 6, D. C. may be substituted for such security required of plaintiff as aforesaid;

3. This restraining order shall expire on the 29 day of July, 1963, unless extended by order of this Court.

/s/ EDWARD M. CURRAN
Judge
District Court of the United States
for the District of Columbia
10:03 A.M.
July 19, 1963.

[fol. 15]

IN UNITED STATES DISTRICT COURT

* * * *

ORDER SETTING HEARING ON PRELIMINARY INJUNCTION—
Filed July 19, 1963

Ordered, that Plaintiff's Motion for Preliminary Injunction be and the same is hereby set for hearing on the 29th day of July, 1963, at 10 o'clock A.M. before the Motions Court.

/s/ EDWARD M. CURRAN
EDWARD M. CURRAN, Judge
District Court of the United States
for the District of Columbia

Signed: July 19, 1963

IN UNITED STATES DISTRICT COURT

* * * *

MOTION FOR POSTPONEMENT OF DATE FOR HEARING MOTION FOR PRELIMINARY INJUNCTION—
Filed July 26, 1963

Now comes plaintiff, with the consent of the defendant, to move this court for an order indefinitely postponing the date for hearing plaintiff's motion for preliminary injunction.

1. There is presently pending before this court for hearing plaintiff's motion for preliminary injunction to restrain the defendant from issuing a certificate of authority to the First Security Bank of Utah, N.A. for a branch in the City of Ogden, Utah, pending a hearing and determination on plaintiff's Complaint for Declaratory Judgment and Injunctive Orders. Both said motion and Complaint were filed on July 18, 1963.

2. Said motion for Preliminary Injunction has been set down for hearing by this court on July 29, 1963. On that date an Order of this court, entered July 19, 1963, will also expire temporarily restraining defendant from issuing a certificate of authority, as described above, pending a hearing on the motion for preliminary injunction.

[fol. 16] 3. The Department of Justice, attorneys for the defendant, has agreed with counsel for plaintiff that no certificate of authority in this matter will be issued by defendant until such time as (a) defendant notifies plaintiff's counsel of an intent to issue a certificate of authority to the First Security Bank of Utah, N.A. for a branch, and (b) plaintiff's motion for a preliminary injunction is thereafter heard by this court following a prompt request by counsel for plaintiff to have such motion heard. A copy of said stipulation is attached hereto as Exhibit A.

4. The aforesaid stipulation of counsel renders unnecessary either an immediate argument on plaintiff's motion for preliminary injunction or a continuance of the Temporary Restraining Order issued by this court on July 19, 1963.

WHEREFORE, and pursuant to the aforesaid stipulation of counsel, plaintiff prays this court for an order indefinitely postponing the hearing on plaintiff's motion for preliminary injunction.

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff
1001 Connecticut Avenue, N.W.
Washington 6, D. C.
Telephone: EX 3-5333

Consent:

/s/ R. DICKEY HAMILTON
R. DICKEY HAMILTON
Attorney for Defendant
Department of Justice
Washington 25, D. C.

IN UNITED STATES DISTRICT COURT

* * * *

STIPULATION—Filed July 26, 1963

It is hereby stipulated and agreed by and between the parties, Commerial Security Bank and James J. Saxon, Comptroller of the Currency, through their respective counsel:

[fol. 17] 1. That counsel for the Comptroller of the Currency will notify James F. Bell, Esq., Counsel for Commercial Security Bank of the Comptroller's intention to issue a certificate of authority to the First Security Bank of Utah, if, in fact, he decides to issue such a certificate.

2. That if counsel for the Comptroller of the Currency notifies James F. Bell, Esq., of the Comptroller's intention to issue the certificate, Commercial Security Bank will apply to the Court for the earliest possible hearing on its pending motion for a preliminary injunction. Commer-

cial Security Bank agrees to apply for a hearing within four days of being so notified, unless counsel for the Comptroller of the Currency agrees to an additional time.

3. That the Comptroller of the Currency will issue no certificate of authority to the First Security Bank of Utah until the District Court has heard Commercial Security Bank's pending motion for a preliminary injunction.

4. That Commercial Security Bank will file with the Court a motion to postpone indefinitely the date for hearing on its pending motion for a preliminary injunction.

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff

/s/ R. DICKEY HAMILTON
R. DICKEY HAMILTON
Attorney, Department of Justice
Attorney for Defendant

IN UNITED STATES DISTRICT COURT

* * * *

ORDER POSTPONING INDEFINITELY HEARING ON MOTION FOR PRELIMINARY INJUNCTION—July 26, 1963

It is Ordered, with consent of all parties, that the hearing on plaintiff's motion for preliminary injunction be and the same is hereby indefinitely postponed.

/s/ JOHN J. SIRICA
Judge
District Court of the United States for the District of Columbia

Dated: July 26, 1963

[fol. 18]

IN UNITED STATES DISTRICT COURT

* * * *

MOTION OF DEFENDANT, JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, TO DISMISS THE COMPLAINT—Filed June 26, 1964

Defendant, James J. Saxon, Comptroller of the Currency by his undersigned attorneys, moves the Court to enter an order dismissing the complaint upon the grounds that:

1. Plaintiff lacks standing to maintain this action, and
2. The complaint fails to state a claim upon which relief can be granted.

Attached hereto and in support of this motion is a memorandum of points and authorities.

/s/ JOHN W. DOUGLAS
JOHN W. DOUGLAS
Assistant Attorney General

/s/ HARLAND F. LEATHERS
HARLAND F. LEATHERS

/s/ R. DICKEY HAMILTON
R. DICKEY HAMILTON
Attorneys, Department of Justice
Attorneys for James J. Saxon,
Comptroller of the Currency

[CERTIFICATE OF SERVICE (omitted in Printing)]

[fol. 19]

IN UNITED STATES DISTRICT COURT

* * * *

CROSS MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT—Filed July 6, 1964

Comes now the Plaintiff, which opposes Defendant First Security Bank's motion for summary judgment, and moves, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in its favor against Defendant Comptroller on the following grounds:

1. There is no genuine issue as to any of the material facts upon which Plaintiff relies in support of its cross motion, and
2. Plaintiff is entitled to summary judgment as a matter of law.

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff
Commercial Security Bank of Ogden
1001 Connecticut Avenue, N. W.
Washington 6, D. C.

IN UNITED STATES DISTRICT COURT

* * * *

PLAINTIFF'S STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL CIVIL RULE 9(h)—Filed July 6, 1964

Plaintiff, in support of its cross-motion for summary judgment herein, and pursuant to Rule 9(h) of the Local Rules of this Court, hereby sets forth a statement of the material facts in support to its cross-motion for summary

judgment and contends there is no genuine issue as to these facts so stated:

1. Plaintiff is a State bank chartered on July 30, 1925, under the banking laws of the State of Utah and is engaged in that State in the business of banking. It main- [fol. 20] tains its principal place of business at Ogden, Utah, and, in addition, is operating a branch bank within the corporate limits of the City of Ogden, Utah, under the authority of the laws of the State of Utah and subject to the control and supervision of the Bank Commissioner of the State of Utah. (Complaint, para. 2)

2. On June 25, 1963, the First Security Bank of Utah, N. A. filed an application with the defendant Comptroller of the Currency, Washington, D. C., pursuant to Title 12 United States Code, Section 36(c) requesting permission, approval and authorization from said defendant to establish and operate a branch bank on Harrison Boulevard, between 30th and 36th Streets, in Ogden, Utah. (Complaint, para. 2; Memorandum of Defendant Comptroller in Support of Motion to Dismiss, p. 1)

3. The First Security Bank of Utah, N.A., is a national banking association chartered by the Comptroller of the Currency under the National Bank Act to do a banking business in the City of Ogden, Utah, where it maintains its principal office and one branch (Complaint, para. 4; Memorandum of Defendant First Security in Support of Motion for Summary Judgment, para. 2).

4. There are four banks transacting business in the City of Ogden, Utah. Plaintiff, Defendant First Security Bank of Utah, N.A., the Bank of Utah, and the Bank of Ben Lomand. (Complaint, para. 7)

5. The City of Ogden (1960 Pop. 70,197) is a city of the "second class", as such city is defined in Utah Code Ann. Title 10, Chap. 1, Sec. 1 (1953 as amended), having a population of more than 30,000 and less than 90,000 persons. (Complaint, para. 6)

6. On June 9, 1964, the Defendant Comptroller notified the Defendant First Security Bank of Utah that its branch application was approved, but he has not yet set a date for the issuance of the certificate of authority authorizing Defendant First Security to operate said branch.

7. On July 19, 1963, Judge Curran issued a temporary restraining order prohibiting the Comptroller from issuing a certificate of authority to First Security. Prior to the expiration date of that order, counsel for Commercial Security and Comptroller filed a Stipulation with this Court by which it was agreed "that the Comptroller of the Currency will issue no certificate of authority to the First Security Bank of Utah until the District Court has heard Commercial Security Bank's pending motion for a preliminary injunction", and "that if counsel for the Comptroller of the Currency notifies James F. Bell, Esq., of the Comptroller's intention to issue the certificate, Commercial Security Bank will apply to the Court for the [fol. 21] earliest possible hearing on its pending motion for preliminary injunction". Notice has not been given pursuant to the Stipulation. (Stipulation between counsel for Commercial Security and Defendant Comptroller filed with this Court; memorandum of Defendant Comptroller in Support of Motion to Dismiss, p. 2.)

Respectfully submitted,

/s/ JAMES F. BELL
JAMES F. BELL
Attorney for Plaintiff
Commercial Security Bank of Ogden
1001 Connecticut Avenue, N.W.
Washington 6, D. C.

* * * *

AFFIDAVIT OF FRED A. BAKER—Filed July 6, 1964

STATE OF UTAH)
: ss
COUNTY OF WEBER)

FRED A. BAKER being first duly sworn on oath deposes and says: I am a Vice President of Commercial Security Bank, plaintiff above named, and make this affidavit for and on behalf of said plaintiff.

Attached hereto marked Exhibit "A" and made a part hereof is the original letter received by Commercial Security Bank addressed to Robert G. Hemingway as President thereof, dated June 30, 1964 from C. B. Quinn, Chief Examiner in the office of the Bank Commissioner of the State of Utah, together with the copy of the opinion of the Attorney General of Utah as appended thereto.

/s/ FRED A. BAKER

Subscribed and sworn to before me this 1st day of July, 1964.

/s/ NEIL R. OLMSTEAD
Notary Public
Residing at Ogden, Utah

My commission expires:
March 24, 1967

[fol. 22] EXHIBIT "A" TO AFFIDAVIT

THE STATE OF UTAH
OFFICE OF THE BANK COMMISSIONER
SALT LAKE CITY

SPENCER C. TAYLOR
Bank Commissioner

C. B. QUINN
Chief Examiner

June 30, 1964

MARGARET MOZLEY
Executive Secretary

Mr. Robert G. Hemingway, President
Commercial Security Bank
Ogden, Utah

Dear Mr. Hemingway:

We are enclosing a copy of an opinion by A. Pratt Kesler, Attorney General, as to whether or not the law prohibits the establishment of a branch of a state chartered bank in the City of Ogden.

Very truly yours,

/s/ C. B. QUINN
Chief Examiner

CBQ:mm
Enclosure

OFFICE OF THE ATTORNEY GENERAL
STATE CAPITOL
SALT LAKE CIY, UTAH

June 30, 1964

Mr. Spencer C. Taylor
Bank Commissioner
Building

Dear Mr. Taylor:

I am writing in response to your request for an informal opinion as to whether or not Utah State law prohibits the establishment of a branch of a State chartered bank in the City of Ogden, Utah, and whether or not the establishment of a branch in said City by a national bank is permissible. While I am not entirely familiar with the [fol. 23] banking situation in Ogden, I do know that there are several unit banks located within the City limits.

Without reciting the applicable statutes, I direct your attention to the recent decision of the Utah Supreme Court in Walker Bank and Trust Company v. Spencer C. Taylor, Bank Commissioner of the State of Utah, and State Bank of Provo, 390 P. 2d 592. This case, with which you are familiar, dealt with a fact situation quite analogous to that in Ogden, and it is my opinion that the court's interpretation of the law would prohibit the establishment by a State chartered bank of a branch bank in Ogden.

It is also my opinion that a national bank is prohibited from establishing a branch bank in Ogden, because such branches may be established only in conformity with State law.

The pertinent portions of Title 12, Section 36, U.S.C.A., provide:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State

banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. * * *"

For your convenience I am attaching a copy of the advance sheet of the court decision in the above case.

Sincerely,

A. PRATT KESLER
Attorney General

HWV/ej
Enc.

[fol. 24]

IN UNITED STATES DISTRICT COURT

* * * *

MEMORANDUM & ORDER—Filed December 18, 1964

This matter came before the Court on the motion to dismiss filed by defendant Comptroller and the cross motions for summary judgment of Intervenor and Plaintiff.

The relevant facts are not in dispute and can be stated as follows:

Plaintiff, a state bank, and Intervenor, a national bank, each have their principal office and one branch in the city of Ogden, Utah. Two other state banks have their main offices in Ogden, the Bank of Utah and the Bank of Ben Lomand. Since Ogden has a population of between 30,000 and 90,000 persons, it is classified as a city of the

"second class" by the Utah Bank Statute (Utah Code Ann., Title 10, Chap. 1, Sec. 1 (1953, as amended)).

On June 25, 1963, the First Security Bank, Intervenor, filed an application with the Comptroller of the Currency, pursuant to Title 12, United States Code, Section 36(c), requesting permission to establish an additional branch office in Ogden. The requested branch would be in addition to the four main bank offices and two branches presently in existence in Ogden. Shortly thereafter, on July 18, 1963, the Commercial Security Bank brought this action against the Comptroller, seeking a declaratory judgment that approval of the branch application would violate 12 U.S.C.A. § 36, and an injunction to restrain the Comptroller from issuing the certificate evidencing approval of the branch. In addition, plaintiff sought preliminary injunctive relief pending disposition of the case.

Judge Curran on July 19, 1963, issued a temporary restraining order prohibiting the Comptroller from issuing a certificate of authority to First National. Prior to the expiration date of that order, On July 26, 1963, counsel for Commercial Security and the Comptroller filed a Stipulation with the Court by which it was agreed:

> ". . . that the Comptroller of the Currency will issue no certificate of authority to the First Security Bank of Utah until the District Court has heard Commercial Security Bank's pending motion for a preliminary injunction . . . that if counsel for the Comptroller of the Currency notifies James F. Bell, Esq., of [fol. 25] the Comptroller's intention to issue the certificate, Commercial Security will apply to the Court for the earliest possible hearing on its pending motion for preliminary injunction."

On June 9, 1964, the Comptroller notified the First Security Bank of Utah that its branch application had been approved, but the Comptroller has not, as yet, notified counsel for Plaintiff of his intention to issue the certificate of authority.

The First Security Bank was granted leave to intervene as a party defendant on June 26, 1964.

At the outset, the Comptroller contends that the Commercial Security Bank has no standing to bring this suit.

The contention can be disposed of by reference to the uncontroverted affidavit of the president of plaintiff bank that if the certificate of authority is issued to the First Security Bank, plaintiff will sustain damage to its business and profits of upwards of fifty thousand dollars a year and plaintiff would have no adequate remedy at law, and by the following holding of our Court of Appeals in *Whitney National Bank* v. *Bank of New Orleans and Trust Company*, 323 F. 2d 290, 300 (C. A. D. C., 1963), cert. granted 376 U.S. 948:

> "The appellee banks cannot complain of lawful competition from other lawfully chartered state or national banks because their own charters are not exclusive licenses. But where, as here, the threatened competition arises from an allegedly illegal facility, the appellee state banks have standing to invoke the jurisdiction of a federal court to challenge the alleged unlawful federal administrative action which admittedly would result in irreparable injury to their property rights in their charters."

The Comptroller further contends that his determination, based upon his statutory interpretation of 12 U.S.C. § 36(c), should be upheld by this Court unless it is clearly unreasonable. Whatever be the merits of this contention, it is clearly not the law in this Circuit. In both *Commercial State Bank of Roseville* v. *Gidney*, 174 F. Supp. 770, 778, affirmed per curiam 108 U.S. App. D. C. 37, 278 F. 2d 871 (1960), and the *Whitney National Bank* case, *supra*, at page 300, the Court stated, ". . . there is no discretion to unlawfully issue a certificate.", and went on to an independent interpretation of 12 U.S.C. § 36(c) and the applicable state law.

[fol. 26] The sole question before this Court is whether the Comptroller of the Currency has the statutory authority to grant a certificate to First Security Bank of Utah, N.A., for the establishment of a new branch in the city of Ogden, Utah.

The applicable statutory law primarily involved is clause (1) of Title 12, U. S. C. § 36(c) (1927, as amended), which provides:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town, or village in which said association is situated, *if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question;* . . .". [emphasis supplied].

Utah Code Ann., Title 7, Chap. 3, Sec. 6 (1953, as amended), provides as follows:

"Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. No unit bank organized and operating at a point where there are other operating banks, state or national, shall be permitted to be acquired by another bank for the purpose of establishing a branch *until such bank shall have been in operation as such for a period of five years.*" [emphasis supplied].

As stated above, Ogden, Utah, is not a city of the "first class," and there are already located in Ogden four main bank offices and two branch banks. It is clear to this Court at the outset that a state bank would be prohibited from opening a branch in Ogden unless it took over one of the existing banks which had been in operation for at least five years. Thus, if a state bank had applied to the Utah Bank Commissioner for a branch in Ogden under the same conditions which the First Security Bank applied to the Comptroller in this case, the application would [fol. 27] clearly have been denied.[1] The question before

[1] A recent decision of the Supreme Court of Utah, *Walker Bank & Trust Co.* v. *Taylor*, 390 P. 2d 592 (1964), construed the Utah statute with regard to Provo, Utah, which, like Ogden, is a city of the "second class." The court there held that under the Utah branch statute, *de novo* branching by a State bank was prohibited in a city of the "second class" even when it was the *only* unit bank in the city.

this Court, therefore, has been narrowed down to whether or not clause (1) of 12 U.S.C. § 36(c) requires the Comptroller to apply to the establishment of national bank branches exactly the same statutory standards as apply to the establishment of state bank branches.

The defendants argue that if it is at all possible for a state bank to establish a branch in the city in question, then the Comptroller may approve a branch for a national bank, whether or not the national bank meets the specific requirements of a state law which would be applied to the state bank. The plaintiff, on the other hand, argues that the Comptroller must apply the same statutory standards as would be applied to a state bank.

In *Commercial State Bank of Roseville* v. *Gidney, supra,* an opinion affirmed by our Court of Appeals, Judge Youngdahl of this Court held that indeed it was ". . . the apparent purpose of Congress to have *exactly* the same standards—state law—apply to the establishment of national bank branches as applied to the establishment of state bank branches." (at page 775). Judge Youngdahl applied a Michigan state court case in granting a preliminary injunction against the Comptroller restraining him from issuing a branch certificate to a national bank in Michigan. The holding was in terms of § 36(c) generally, though the provision involved in that case, set out in clause (2) of § 36(c), deals only with branches outside of the city in which the main office of the bank is situated.

On the other hand, the learned Judge Christensen of the United States District Court of Utah, Northern Division, recently held that the Comptroller is *not* held to specific conditions of Utah law in granting branches to national banks under clause (1) of § 36(c), that the granting of express authority for branch banking was all that is necessary for the Comptroller to authorize intra-city branch banking by a national bank. *Walker Bank & Trust Co.* v. *Saxon,* 234 F. Supp. 74 (1964). In that case, the defendant national bank, located in a "second class" city, as is the situation in the instant case, was not required to take over an existing bank in order to establish [fol. 28] a new branch. The *Commercial Bank of Roseville* case, *supra,* as well as other cases emphasizing the control-

ling effect of the conditions specified by state law, were distinguished as constructions of subsection (c), clause (2). Judge Christensen held that Congress did not intend to apply the same conditions to clause (1) as it did to clause (2) of subsection (c), and he justified this distinction by the difference in language between the two clauses and by reference to legislative history of the enactments of clause (1) in 1927 and of clause (2) in 1933.

After a careful consideration of Judge Christensen's opinion, which seems to be directly in point with the case at hand, and with due deference and respect for its learned brother, this Court feels impelled to reach a different conclusion as to the construction to be given to clause (1) of § 36(c).

It seems clear to the Court that in order for the "dual banking system" of the United States, consisting of state chartered banks and national banks chartered under the National Bank Act of 1864 (now 12 U.S.C.A. §§ 21-213), to continue to function as such, there must be a competitive equality in at least the most important areas of competition between the two systems. If such were not the case, one or the other of the two types of banks, the one with the competitive weight against it, would substantially be driven out of existence, either through failures or conversions to the other class of banking.

Congress has recognized this need for competitive equality in a manner that protects the state banks and national banks at the same time. In many important areas of the National Bank Act, Congress has incorporated state law as the standard for national banks.[2] In this manner, states are permitted to control national banks to a great extent, but the states must apply the same controls to state banks as they do to the national banks.

Prior to 1927, however, there was a serious inequality between state and national banks in the important area of branching. There was no provision for branches in the National Bank Act, and the Supreme Court had made it clear that, except in the case of certain limited and specifically stated exceptions by Congress, national banks had

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[2] 12 U. S. C. A. §§ 36(c), 51, 85, 92a(a), and 214c.

no branch authority whatever. *First National Bank of Missouri* v. *Missouri*, 263 U.S. 640 (1924). Many states [fol. 29] at that time did allow branching, however, and as a result, the competitive situation was so imbalanced that the Comptroller in his 1924 report (Government Printing Office), stated, at page 4:

> "The question as to whether national banks may be granted the opportunity to meet the competition of state banks in intra-city branching in my opinion involves the question of the perpetuation of the national banking system."

This situation was the background for the enactment of the McFadden Act of 1927, part of which is now § 36(c), clause (1). That statute also amended the Federal Reserve Act to prohibit new branches outside the corporate limits of the municipality in which the main office was located to state banks which were members of the Federal Reserve System. The purpose of the Act, and this is borne out by a study of the legislative history, was obviously to correct the competitive imbalance. The Banking Act of 1933 removed the above restriction on state member banks and in addition enacted what is now clause (2) of 13 U.S.C.A. 36(c) (1933, as amended) set out below:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: . . . (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to locations imposed by the law of the State on State banks . . .".

In spite of the difference in the language of clauses (1) and (2) of subsection (c), this Court feels that the purpose of each was to establish competitive equality, and that the two provisions should, therefore, be interpreted in the same manner.

Thus, this Court feels, in light of the *Commercial State Bank of Roseville* case, *supra*, that it is bound to hold that the exact standards of the Utah branching law must be applied to the First Security Bank of Utah, N. A., and that the Comptroller does not possess the statutory authority to authorize the branch in question.

Even if it were not so bound, however, the Court feels that it would come to the same decision in this case. If [fol. 30] the Comptroller were permitted at this time to authorize branches for national banks when other banks in the city in question were not at the time and under the same conditions permitted by state law to branch, the Court feels that the purpose of Congress in enacting clause (1) of subsection (e) would not be met. In fact, the grave competitive imbalance which existed before 1927 would only be shifted to the detriment of state banks. Of course, states could prevent this situation by liberalizing their branching laws, but the Court does not feel that this pressure on state legislatures was intended.

Thus, the Court will grant the declaratory judgment that the issuance by the defendant, Comptroller of the Currency, of his certificate evidencing his approval and authorization of the establishment and operation by First Security Bank of Utah, N. A., of Ogden, Utah, of a branch on Harrison Boulevard between 30th and 36th Streets, Ogden, Utah, would constitute a violation of 12 U. S. C. A. § 36. The Court will also enjoin the defendant Comptroller of the Currency from issuing the above certificate of authority.

Accordingly, there being no material issue of fact, and in light of the above opinion, it is by the Court this 18th day of December, 1964,

ORDERED, that the Motion to Dismiss filed by defendant Comptroller of the Currency be, and the same hereby is, denied;

ORDERED, that the Motion for Summary Judgment filed by the Intervenor-Defendant, First Security Bank of Utah, be, and the same hereby is, denied; and further

ORDERED, that the Motion for Summary Judgment filed by the Plaintiff, Commercial Security Bank, be, and the same hereby is, granted.

IT IS FURTHER ORDERED, that the defendant Comptroller of the Currency be, and he hereby is, enjoined from authorizing the establishment of the branch bank by the First Security Bank of Utah, N. A., which is the subject matter of this cause of action.

/s/ LEONARD P. WALSH
LEONARD P. WALSH, JUDGE

[fol. 31]

IN UNITED STATES DISTRICT COURT

* * * *

NOTICE OF APPEAL—Filed February 15, 1965

Notice is hereby given this 15 day of February, 1965, that defendant, James J. Saxon, Comptroller of the Currency hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 18th day of December, 1964 in favor of Commercial Security Bank and against the defendant, James J. Saxon, Comptroller of the Currency.

/s/ RICHARD S. BEATTY
Attorney for
Def., James J. Saxon

IN UNITED STATES DISTRICT COURT

* * * *

ORDER EXTENDING TIME TO DOCKET APPEAL—Filed March 17, 1965

Pursuant to the provisions of Rule 73(g) of the Federal Rules of Civil Procedure, it is this 17th day of March, 1965,

ORDERED, that the Defendant James J. Saxon's time for filing and docketing the record on appeal with the United States Court of Appeals for the District of Columbia Circuit is hereby extended fifty (50) days, to and including May 13, 1965.

/s/ LEONARD P. WALSH
Judge

[CERTIFICATE OF SERVICE Omitted in Printing]

[fol. 32]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1965

Civil 1815-63

* * * *

No. 19,356

FIRST SECURITY BANK OF UTAH, N. A., APPELLANT

v.

COMMERCIAL SECURITY BANK, APPELLEE

No. 19,357

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, APPELLANT

v.

COMMERCIAL SECURITY BANK, APPELLEE

Appeals from the United States District Court for the District of Columbia.

Before: Bazelon, Chief Judge, and Wright and Tamm, Circuit Judges.

JUDGMENT—Nov. 18, 1965

These cases came on to be heard on the record on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the judgment of the District Court appealed from in these cases is hereby affirmed. *Walker Bank & Trust Company* v. *James J. Saxon, Comp-*

troller of the Currency, et al., decided October 26, 1965, No. 7981, C.C.A. Tenth Circuit.

It is further ORDERED by the court that all parties bear their own costs on these appeals.

Per Curiam.

Dated: Nov. 18 1965

[fol. 34]

[Clerk's Certificate to foregoing Transcript Omitted in Printing.]

[fol. 35]

SUPREME COURT OF THE UNITED STATES

No. ——, October Term, 1965

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, PETITIONER

vs

COMMERCIAL SECURITY BANK

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 16, 1966

/s/ Abe Fortas
Associate Justice of the Supreme Court of the United States

Dated this 16th day of February, 1966

[fol. 36]

SUPREME COURT OF THE UNITED STATES

No. 1126, October Term, 1965

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, PETITIONER

v.

COMMERCIAL SECURITY BANK

ORDER ALLOWING CERTIORARI—May 2, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with Nos. 875 and 1009 and two hours are allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 219252 849